

RECEIVED

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

NOV 9 2005

AT 8:30 ^M
WILLIAM T. WALSH
CLERK

ACCERIS COMMUNICATIONS
TECHNOLOGIES, INC.,

Plaintiff,

v.

ITXC CORP.,

Defendant.

Civil Action No. 04-1690 (GEB)

AMENDED PRETRIAL SCHEDULING ORDER

This matter having come before the Court during a status conference conducted on October 31, 2005, and the Court having considered the positions of the parties; and good cause having been shown;

IT IS on this 2nd day of November 2005,

ORDERED THAT:

1. Counsel shall report in writing to the Court no later than November 14, 2005 regarding the status of the parties' settlement discussions.

2. The parties shall simultaneously exchange preliminary claim constructions by March 13, 2006.

3. The parties will complete fact discovery in this case on or before August 14, 2006. No discovery will issue beyond that date, except upon motion and for good cause shown.

4. In accordance with Fed. R. Civ. P. 30, the parties shall be limited to 10 depositions, per side, except upon leave of the Court. In accordance with Fed. R. Civ. P. 33, the parties will be limited to 40 interrogatories (including all subparts), per party, exception leave of the Court.

5. Any motion to join new parties, whether by amended or third-party complaint, must be filed no later than May 12, 2006 and made returnable on June 13, 2006.

6. Any motion to amend the pleadings must be filed no later than May 12, 2006 and made returnable on June 13, 2006.

7. Any discovery or case management disputes will be brought to the Magistrate Judge's attention immediately by conference call with local counsel, with letter preceding the conference call. L. Civ. R. 37.1(a)(1); see also L. Civ. R. 16.1(f).

8. Any dispositive motions will be addressed during the status conference on July 19, 2006.

9. Counsel will confer in an attempt to resolve any discovery or case management disputes before making such dispute the subject of a motion. No discovery motion will be entertained absent counsel's full compliance with L. Civ. R. 37.1(a)(1); see also L. Civ. R. 16.1(f).

10. Copies of affirmative expert reports shall be served not later than September 15, 2006.

11. Copies of rebuttal expert reports shall be served not later than October 13, 2006.

12. No expert shall testify at the time of trial as to any opinions, nor base those opinions on facts, not substantially disclosed in any report as described in the preceding paragraph.

13. Expert depositions, if any, shall be concluded by November 27, 2006.

14. A status conference will be held on April 21, 2006 at 10:00 A.M. to discuss a *Markman* schedule. On April 17, 2006, parties shall submit position papers regarding what additional fact discovery should be conducted before any *Markman* submissions are filed.

15. A status conference will be held before the undersigned, at the Clarkson S. Fisher United States Courthouse, Trenton, New Jersey on July 19, 2006 at 10:00 A.M. to discuss dispositive motion practice and final pretrial conference.

16. The attorneys for all parties are further directed to meet together by agreement, initiated by counsel for the plaintiff no later than ten (10) days before the date of the pretrial conference to:

- a. discuss settlement;
- b. stipulate to as many facts and issues as possible;
- c. prepare a Final Pretrial Order in the form and content as required by the Court. Plaintiff's counsel will prepare the Final Pretrial Order and will submit it to all other counsel for approval and execution. The original and one copy of the executed Final Pretrial Order will be delivered to the pretrial conference. All counsel are responsible for the timely submission of the Final Pretrial Stipulation and Order;
- d. examine all exhibits and documents proposed to be used at trial;

e. complete all other matters which may expedite both the pretrial and trial of the case;

f. original and one copy of the proposed Final Pretrial Order is to be submitted five (5) days in advance of the conference.

17. Appropriately colored markers (obtained from the Clerk's Office) will be affixed to the exhibits at or prior to the time they are shown to opposing counsel at the meeting of counsel referred to above, and each marker will bear the number of the exhibit to which it is affixed.

18. At the pretrial conference counsel should be prepared to discuss settlement of the case. Clients must be made available by telephone.

19. The Court may, from time to time, schedule conferences as may be required, either on its own motion or at the request of counsel.

20. Since all dates set forth herein are established with the assistance and knowledge of counsel, there will be no extensions except for good cause shown and by leave of Court, even with consent of all counsel.

21. Failure to appear at subsequent conferences, or to comply with any of the terms of this Order, may result in sanctions.

22. Any proposed confidentiality order agreed to by the parties must be accompanied by a separate statement showing specific good cause for the entry of the order. See *Pansy v. Borough of Stroudsburg*, 23 F.3d 772 (3d Cir. 1994); *Glenmede Trust Company v. Thompson*, 56 F.3d 476 (1995); Fed R. C P. 26(c).

23. Counsel are advised that the Court has various audio/visual and evidence presentation equipment available for use at trial at no cost to the Bar. This equipment includes an evidence presentation system, which consists of a document camera, digital projector, and screen. The projector may be used to display images which originate from a variety of sources, including television, VCR, and personal computer. The document camera may be used to display documents, photographs, charts, transparencies and small objects. For further information, please contact the Courtroom Deputy Clerk, Dents Glynn at 609-989-2144.

24. Counsel are invited to use the *George H. Barlow* Attorney Conference Room located on the third floor of the Courthouse Annex. The room is equipped with telephones, laptop access/printer, copier, and fax.

/s/
JOHN J. HUGHES
United States Magistrate Judge

ALL PROPOSED ORDERS AND LETTER MEMORANDA SENT TO CHAMBERS SHOULD BE IN WORDPERFECT FORMAT AND E-MAILED TO: njdnef_hughes@njd.uscourts.gov. ANY FILINGS WITH THE CLERK'S OFFICE SHOULD BE IN PDF FORMAT.